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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,125

08/25/2003

Byoung-Woo Cho

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STAAS & HALSEY LLP

SUITE 700

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EXAMINER

MORAN, KATHERINE M

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/647,125	<b>Applicant(s)</b> CHO, BYOUNG-WOO	
	<b>Examiner</b> KATHERINE MORAN	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/21/08 has been entered.

### ***Response to Amendment***

Applicant's response of 10/21/08 has been received and reviewed. Applicant amended claims 1, 9-11, 18, 20, and 21 and added new claim 22. Claims 1-22 are pending.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 4, 6, 7, 11, 12, 14, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (U.S. 6,336,224). Wang discloses the invention as claimed. Wang teaches headgear comprising a cap having a crown 2 and visor/sunshield 1, and a headband 3 attached to the crown and comprising a front part 31 formed of stretchable material and a rear part 32, behind the front part in a circumferential direction of the headband, formed of a non-stretchable material (see Wang's claim 5). The front part is closer to the visor than the rear part, the front and rear parts forming a continuous loop and respective ends of the front and rear parts abutting

Art Unit: 3765

each other. A portion of the front part 31 is 180 degrees or less opposite to a portion of the rear part along a circumference of the loop in that an end of the front part is opposite an end of the rear part 32, as represented by the abutting ends. Figure 3 shows that at least the bottom edge of the front part 31 is in stitched contact with the crown 2 and in tension (due to the stitched relationship) and the front part 31 extends along the crown's bottom to edges of the visor. Wang's crown is a fixed size in that the crown's size remains fixed unless acted upon by an outside force. It is noted that further structure defining a fixed size crown has not been provided. Regarding claim 16, the term "stretched" is not given patentable weight in interpreting an apparatus claim, since it recites a process. The front part is capable of being stretched.

4. Claims 3, 8-10, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '224 in view of Landers (U.S. 2003/0106135). Wang discloses the invention substantially as claimed. However, Wang doesn't teach tension of the front part of the headband greater than a tension of the top part of the front part of the headband so that the front part inclines toward a center of the crown. Landers teaches a cap structure 10 with a lower portion of a stretchable headband 14 attached to the crown 12 in tension, with the resulting tension being greater than a tension of a top portion of the headband so that the front part of the headband inclines toward a center of the crown. Since Landers' top portion is not sewn or attached to any other portions of the cap, there is minimal tension present, and the top portion is free and capable of inclining toward a center of the crown depending upon how the cap is placed on the wearer's head. Therefore, it would have been obvious to provide Wang's top part of the

Art Unit: 3765

front part with a lower tension than its stitched lower edge, in order to allow for unencumbered movement of the top part such that the top part will more readily conform to the wearer's head. Wang also doesn't teach the visor is elastic and comprises a bill extending outside the crown and an extended portion extending into the crown. Landers provides the elastic neoprene foam rubber visor 16 with an extended portion 24 extending into the crown 12. Thus, the extended portion of the visor, the crown and headband are attached together in tension to provide a curved visor configuration. This configuration lends itself to compact storage and flexing of the cap without destroying the cap form. Therefore, it would have been obvious to provide Wang's cap with the visor structure as taught by Landers in order to provide a pre-curved cap structure.

5. Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '224 in view of Young (U.S. 6,546,563). Wang discloses the invention substantially as claimed. However, Wang doesn't teach the front part extends circumferentially in the crown along the bottom beyond edges of the visor. Young teaches a band portion 22 which extends circumferentially along the bottom beyond edges of the visor. This configuration prevents seams the temple region of the wearer's head, such there is no undue pressure or stress applied thereto. Therefore, it would have been obvious to form Wang's front part such that it extends circumferentially along the bottom beyond edges of the visor in order to avoid seams at critical areas of the cap's circumference.

6. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Art Unit: 3765

Wang '224 in view of Kronenberger (U.S. 5,983,398). Wang discloses the invention substantially as claimed. However, Wang doesn't teach the visor is elastic and/or the method of making including attaching the visor to the crown before the headband is attached to the crown and producing an extended portion of the elastic visor extending into an interior of the crown. Kronenberger teaches a method of making as shown in Figure 7, with the visor's extended portion 66 attached to the crown portion 64, with the headband 58 then attached thereto. Therefore, it would have been obvious to form Wang's cap with the elastic visor in order to allow for flexibility of the visor, and to manufacture the cap according to Kronenberger's method steps so that the headband is not deformed when the visor is flexed or stretched.

### ***Response to Arguments***

7. Applicant's arguments have been fully considered but they are not persuasive. Applicant submits that Wang fails to teach elastic bands 31 that are opposite a portion of rear sweatband 32. As outlined above, Wang includes abutting ends that are opposite one another.

### ***Allowable Subject Matter***

8. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be

Art Unit: 3765

reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300.

General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Katherine Moran/

Primary Examiner, AU 3765